IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

Arb.A.No. 41 of 2006()

OPARB.44/2005 of VI ADDL.DISTRICT COURT, ERNAKULAM
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APPELLANTS/RESPONDENTS:
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1. CITICORP FINANCE INDIA LTD.,
   RAVIPURAM, ERNAKULAM, REPRESENTED BY ITS
   AUTHORISED SIGNATORY.

2. SHRIRAM TRANSPORT FINANCE COMPANY LTD.,
   CHITTOOR ROAD, ERNAKULAM, REPRESENTED BY ITS
   ASSISTANT BRANCH MANAGER, SIBI JOHN.

BY ADV. SRI.PHILIP T.VARGHESE
SRI.THOMAS T.VARGHESE

RESPONDENTS: PETITIONER:

SONIYA SIBICHAN,
8/540, KUKDAKACHIRA HOUSE, THIRUVANKULAM,
ERNAKULAM DISTRICT.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SMT.THANKOM.G
SRI.E.M.MURUGAN

THIS ARBITRATION APPEALS HAVING BEEN FINALLY HEARD ON 19/03/2007,THE COURT ON 26/3/2007 DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

ARB. APPEAL.NO.41 OF 2006

Dated this the 26th day of March, 2007

JUDGMENT

Raman,J.

Appellants are respondents in Arbitration O.P.No.44/2005 on the file of the District Court, Ernakulam. The respondent herein filed the Arbitration O.P. under Section 9 of the Arbitration and Conciliation Act inter alia seeking for an order of permanent prohibitory injunction restraining the appellants herein and persons under them from alienating, selling or parting with possession of the schedule vehicle KL-7/AJ/4707 to any other party and for a mandatory injunction directing the respondents to deliver back the vehicle to him. The allegation in the Arbitration O.P. is that the respondent herein availed a loan of Rs.5,75,000/- from the first appellant herein. The 2nd appellant herein is stated to be the authorised agent of the lst appellant, which has

processed the agreement. It was inter alia contented that the instalment facility in the loan agreement is only directory in nature and the real transaction is nothing but loan transaction and not hire purchase agreement. It is also alleged that she has spent huge amount for keeping the vehicle in good condition. Though there was an arbitration clause in the agreement between the parties, the appellants have not appointed an Arbitrator. An ex parte interim injunction was granted by the court below. Appellants herein after entering appearance, filed their counter affidavit denying the averments made in the petition. It was also contended that the agreement in question is a hire purchase agreement and as per the terms of the agreement, a bus was sold on hire purchase basis to the respondent herein, as per which the value has to be repaid in 47 monthly instalments at the rate of Rs.18,097/- and the last instalment was at Rs.18,116/-. The

respondent committed gross default. Due to the default, the agreement was terminated and the 2nd appellant was entitled to repossess the vehicle and repossession was done, as per the instruction of M/s. Citicorp Finance (India) Ltd. Even though a case was registered against the 2nd appellant, subsequently the vehicle was released to the 2nd appellant from the Magistrate Court as an interim custody, which order was not challenged and has become final. The suit filed by the respondent herein before the Sub Court seeking identical relief was also dismissed. It was suppressing all the above facts that the petition was filed. The respondent is liable to pay the entire amount as per the terms of the agreement. No request whatsoever was made by the respondent herein for arbitration nor has raised any dispute at any time before filing the petition. The 2nd appellant was ready and willing to initiate arbitration proceedings, if only the request is made in that

behalf by the respondent herein. But in the absence of any such request the petition filed under Section 9 is without jurisdiction and no circumstances exist justifying the grant of interim injunction.

2. Ext.B1, which is the hire purchase agreement, was produced in this case. As per Clause 12 of the agreement between the parties, all disputes, differences and/or claims, arising out of this hire purchase agreement, whether during its subsistence or thereafter, are to be settled by arbitration in accordance with the provisions of Arbitration and Conciliation Act, 1996 or any other statutory modification or re-enactment for the time being in force and is to be referred to the sole arbitrator nominated by the Managing Director of the owner. The award given by such an arbitrator is to be final and binding on the parties to the agreement. Though there is an arbitration clause in the agreement,

no request to refer the matter for arbitration was made by the respondent herein. But the court below took the view that an application filed under Section 9 before the District Court itself could be considered as a request for arbitration and held that an Arbitrator has to be appointed by the Managing Director of the 2nd appellant and in that view of the matter, the interim injunction as sought for was made absolute but the mandatory injunction sought for was however disallowed.

3. Though the respondent was served notice, she did not enter appearance or contest the matter in this appeal.

4. From the narration of the facts, it is evident that the respondent herein has not initiated any steps for referring the matter for arbitration. The court below, in such circumstances, was not correct in law in treating the petition filed under Section 9 as a request by the respondent to refer the matter for

arbitration. Even after the order passed by the court below, the respondent did not make any request for referring the matter for arbitration. Section 9 of the Arbitration and Conciliation Act deals with interim measures to be provided by the court pending adjudication of the dispute by the arbitral proceedings. In this case even after the order was passed by the court below giving such interim measures, the respondent has not made any request for arbitration.

5. In such circumstances, there is no justification for continuation of the interim relief so granted. Accordingly, we vacate the order of injunction passed by the court below and allow this appeal.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.